

TEAGUE P. PATERSON, SBN 226659  
 BEESON, TAYER & BODINE, APC  
 1404 Franklin Street, 5<sup>th</sup> Floor  
 Oakland, CA 94612  
 Telephone: (510) 625-9700  
 Facsimile: (510) 625-8275  
 Email: tpaterson@beesontayer.com

Attorneys for Plaintiff  
 TRI-COUNTIES WELFARE TRUST FUND

**UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 AT SAN JOSE**

TRI-COUNTIES WELFARE TRUST FUND,  
 Plaintiff,

v.

KELVIN HILDEBRAND, INC.,  
 HILDEBRAND & SONS TRUCKING, INC.,  
 WEST COAST DRAYAGE, HILDEBRAND  
 BROTHERS TRUCKING, MORYA  
 GULARTE TRUCKING, d/b/a MG  
 TRUCKING, and KELVIN HILDEBRAND,  
 Defendant.

Case No. CV-07-5941 JW

**DECLARATION OF TEAGUE P.  
 PATERSON IN SUPPORT OF MOTION  
 AND NOTICE OF MOTION TO STRIKE  
 AND TO CORRECT THE DOCKET AND  
 ORDER TO ENTER DEFAULT**

Hearing Date: June 27, 2008  
 Hearing Time: 9:00 a.m.  
 Courtroom: 8, 4<sup>th</sup> Floor  
 Judge: Hon. James Ware  
 Complaint Filed: Nov. 26, 2007  
 Trial Date: None

**DECLARATION OF TEAGUE P. PATERSON**

I, Teague P. Paterson, under penalty of perjury declare as follows:

1. I am an attorney licensed to practice law in the State of California, and am fully familiar with this action, having had primary responsibility for its prosecution on behalf of Plaintiffs.
2. The summons and complaint in this action were duly served on Defendants, as indicated in the Certificate of Service, entered on the Court's docket as Item No. 7-11.
3. On December 14, 2007, I received a letter from Dorothea Hildebrand which on its face indicated a carbon copy was sent to the Court. As indicated in Docket Entry No. 4, the Clerk

1 designated the letter as an Answer to the Complaint on behalf of Defendant Hildebrand & Son. A  
2 true and correct copy of the letter is attached hereto as Exhibit A.

3 4. On December 14, 2007, I received a letter from Morya Gualarte which on its face  
4 indicated a carbon copy was sent to the Court. As indicated in Docket Entry No.5, the Clerk  
5 designated the letter as an Answer to the Complaint on behalf of Defendant MG Trucking. A true  
6 and correct copy of the letter is attached hereto as Exhibit B.

7 5. On December 28, 2007, I received a letter from Kathleen Espinoza which on its face  
8 indicated a carbon copy was sent to the Court. As indicated in Docket Entry No. 6, the Clerk  
9 designated the letter as an Answer to the Complaint on behalf of Defendant Hildebrand Bros.  
10 Trucking. A true and correct copy of the letter is attached hereto as Exhibit C.

11 6. On January 4, 2008, I received a letter from Kelvin Hildebrand which on its face  
12 indicated a carbon copy was sent to the Court. As indicated in Docket Entry No.12, the Clerk  
13 designated the letter as an Answer to the Complaint on behalf of Defendant Kelvin Hildebrand Inc.  
14 A true and correct copy of the letter is attached hereto as Exhibit D.

15 7. On January 4, 2008, I received a letter from Diane Hildebrand which on its face  
16 indicated a carbon copy was sent to the Court. As indicated in Docket Entry No.13, the Clerk  
17 designated the letter as an Answer to the Complaint on behalf of Defendant West Coast Drayage. A  
18 true and correct copy of the letter is attached hereto as Exhibit E.

19 8. On April 10, 2008, I filed papers seeking entry of default against defendants Kelvin  
20 Hildebrand, Inc., Hildebrand & Sons Trucking, Inc., West Coast Drayage, Hildebrand Brothers  
21 Trucking and Kelvin Hildebrand.

22 9. I subsequently received notices indicating the Clerk declined to enter default, although  
23 such notices did not contain explanations. Directly thereafter, on April 16, 2008, I telephoned the  
24 Clerk of Court and was directed Jay Younger, the Court's default clerk who informed me informed  
25 me that the letters attached as Exhibits A through D had been designated as Answers to the  
26 Complaint and that without further direction from the Court no default could be entered. Mr.  
27 Younger informed me my next course of action should be to bring this issue before the presiding  
28 judge.

1  
2 I declare under the penalty of perjury under the laws of the State of California that the  
3 statements in this declaration are true and correct.

4  
5 Dated: May 9, 2008

6 /s/ Teague P. Paterson  
7 Teague P. Paterson  
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**EXHIBIT A**



6 Lewis Road • Watsonville, CA 95076 • Phone (831) 722-3006 • Fax (831) 722-0658

RECEIVED

DEC 14 2007

December 13, 2007

Beeson, Tayer & Bodine

Teague Paterson, SBN 226659  
BEASON, TAYER & BODINE  
1404 Franklin Street – 5<sup>th</sup> Floor  
Oakland, Ca 94612

Reference: CASE NUMBER: CV 07 5941  
TRUSTEES OF TRI-COUNTIES WELFARE TRUST FUND

Dear Sir:

In answer to the complaint against HILDEBRAND & SON TRUCKING, INC. please be advised there is no association between Kelvin Hildebrand, Inc., Hildebrand Bros. Trucking or West Coast Drayage.

Hildebrand & Son has been the prime trucker for Granite Construction – Monterey Bay since 1955. They have also had a Union Contract with Local 890 since 1960. During this period they have paid all Medical and Pension required in a timely fashion.

Each year there is an extensive audit performed by Lindquist LLP, certified public accounts retained by Tri-Counties Welfare Trust Fund and they have found no discrepancies.

Hildebrand & Son Trucking provides fueling facilities and truck parking for approximately 23 different companies. Kelvin Hildebrand, Inc. and West Coast Drayage have portable office space on our premises and pay yard, shop and office space fees.

Based on the above facts, we request that Hildebrand & Son Trucking, Inc. be removed from this complaint.

Sincerely,

A handwritten signature in cursive script, reading "Dorothea Hildebrand".

DOROTHEA M. HILDEBRAND  
President

cc: Richard W Wieking, Clerk  
United States District Court

**EXHIBIT B**



## MORYA GULARTE TRUCKING

P. O. Box 6202 ~ 333A Espinosa Road ~ Salinas, CA 93912

Phone: (831) 449-0370 ~ Fax: (831) 722-0658  
RECEIVED CA#0084527

DEC 14 2007

December 12, 2007

Beeson, Tayer & Bodine

Teague Paterson, SBN 226659  
BEASON, TAYER & BODINE  
1404 Franklin Street - 5<sup>th</sup> Floor  
Oakland, Ca 94612

Reference: CASE NUMBER: CV 07 5941  
TRUSTEES OF TRI-COUNTIES WELFARE TRUST FUND

Dear Sir:

In answer to the complaint against MORYA GULARTE dba MORYA GULARTE TRUCKING, please  
Be advised I am no longer a stockholders of HILDEBRAND & SON TRUCKING, INC.

MORYA GULARTE TRUCKING is a sole proprietor and has never been incorporated.

Born MORYA N HILDEBRAND, I inherited stock on the death of my father IN 1972. this stock was  
Sold in 1982.

My association with Hildebrand & Son is through employment only.

I am also certified with the State of California as a WBE & DBE which provides G.C.Co. with  
Credit on all state & federal funded projects.

Based on the above facts I do not believe I should be included in this complaint and request that I be  
removed from same.

Sincerely,

A handwritten signature in cursive script, appearing to read "Morya N Gularte", is written over a printed name and phone number.

MORYA N GULARTE  
(831) 601-1644

c.c.: Clerk, U.S. District Court  
San Jose, California

**EXHIBIT C**



RECEIVED

DEC 28 2007

**HILDEBRAND BROTHERS**

**635 SAN JUAN PASS ROAD**

**CORRALITOS, CA 95076**

**TELEPHONE (831) 227-5690**

Beeson, Tayer & Bodine

December 19, 2007

Teague Patterson, SBN 226659  
BEASON, TAYER & BODINE  
1404 Franklin Street – 5<sup>th</sup> Floor  
Oakland, Ca 94612

Reference: CASE NUMBER CV 07 5941  
TRUSTEES OF TRI-COUNTIES WELFARE TRUST FUND

Dear Sir:

The above complaint was filed based on an audit performed for the period of January 1, 2004 through December 31, 2006.

Hildebrand Bros. Did not exist prior to January 2007.

This business operates out of the jurisdiction of Teamsters Local 890 loading in Santa Maria and unloading in Cupertino.

I am requesting that this company be released from the above complaint.

I am currently working with Steve Garcia of Local 890 to resolve this matter.

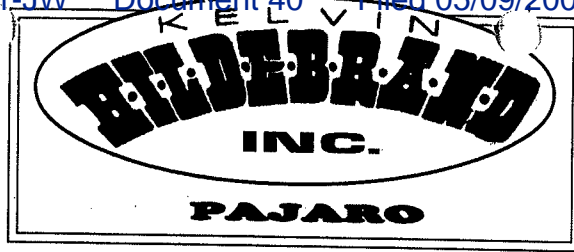
Sincerely,



MS. KATHLEEN ESPINOZA  
Office Manager

Cc: Richard W. Wieking, Clerk  
United States District Court

**EXHIBIT D**



RECEIVED

JAN - 4 2008

Beeson, Tayer & Bodine

6 LEWIS ROAD  
WATSONVILLE, CA 95076  
(831) 768-9104 • FAX (831) 768-1020

December 19, 2007

Teague Patterson, SBN 226659  
BEASON, TAYER & BODINE  
1404 Franklin Street - 5<sup>th</sup> Floor  
Oakland, Ca 94612

Reference: CASE NUMBER CV 07 5941  
TRUSTEES OF TRI COUNTIES WELFARE TRUST FUND

Dear Sir:

I am enclosing a copy of Section 24, reference item (c) under Collective Bargaining Agreement dated 2003-2008, for Kelvin Hildebrand, Inc.

The audit referred to in this complaint includes non-union employees covered under other insurance plans For this period and not considered "Eligible Employees" under this Agreement.

The total amount due for "Eligible Employees" is \$4,326.84.

I am currently working with Steve Garcia of Local 890 to resolve this matter.

I believe this a harassment lawsuit and should be removed from the courts .

Sincerely,

KELVIN HILDEBRAND,  
President

Cc: Richard W. Wieking, Clerk  
United States District Court

**EXHIBIT E**

RECEIVED

JAN - 4 2008

Beeson, Tayer & Bodine

**WEST COAST DRAYAGE**

**P.O. BOX 400**

**WATSONVILLE, CA 95077**

**TELEPHONE (831) 722-3006**

**FAX (831) 722-2439**

December 19, 2007

Teague Patterson, SBN 226659  
BEASON, TAYER & BODINE  
1404 Franklin Street - 5<sup>th</sup> Floor  
Oakland, Ca 94612

Reference: CASE NUMBER CV 07 5941  
TRUSTEES OF TRI-COUNTIES WELFARE TRUST FUND

Dear Sir:

West Coast Drayage is not affiliated with Kelvin Hildebrand, Inc. or Kelvin Hildebrand.

This Company is a sole proprietorship owned by Diane Hildebrand as a W.B.E. (Woman Business Enterprise).

W.C.D. operates as a Sub-contractor for Granite Rock Transportation. W.C.D. owns the power Units and .G.R.Co. owns the trailers - charging trailer rent and commission.

In a letter dated April 11, 2007 signed by Steve Garcia of Local 890, all grievance/issues regarding West Coast Drayage were formally withdrawn.

Please withdraw this Company immediately from this complaint.

Sincerely,



DIANE HILDEBRAND  
Owner

Cc: Richard W. Wieking, Clerk  
United States District Court

**PROOF OF SERVICE****U.S. DISTRICT COURT CASE NO. CV-07-5941 JW**

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is 1404 Franklin Street, 5<sup>th</sup> Floor, Oakland, California 94612. On this day, I served the foregoing Document(s):

**DECLARATION OF TEAGUE P. PATERSON IN SUPPORT OF MOTION  
AND NOTICE OF MOTION TO STRIKE AND TO CORRECT THE DOCKET  
AND ORDER TO ENTER DEFAULT**

☒ By Mail to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Beeson, Tayer & Bodine, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business in a United States mailbox in the City of Oakland, California:

Kelvin Hildebrand, President  
KELVIN HILDEBRAND, INC.  
6 Lewis Road  
Watsonville, CA 95076

Dorothea M. Hildebrand, President  
HILDEBRAND & SONS TRUCKING, INC.  
6 Lewis Road  
Watsonville, CA 95076

Kathleen Espinoza, Office Manager  
HILDEBRAND BROTHERS  
TRUCKING  
635 San Juan Pass Road  
Corralitos, CA 95076

KELVIN HILDEBRAND  
6 Lewis Road  
Watsonville, CA 95076

Diane Hildebrand, Owner  
WEST COAST DRAYAGE  
P.O. Box 400  
Watsonville, CA 95077

☐ By Personal Delivering a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

☐ By Overnight Delivery to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

☐ By Facsimile Transmission to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

I declare that the foregoing is true and correct. Executed in Oakland, California, on this date, May 9, 2008.

/s/Tanya Gatt  
Tanya Gatt, Secretary to Teague Paterson